

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 176 OF 2007

Pratap B. Rawat	..Petitioner
versus	
Deputy Commissioner of Police	
& Ors.	..Respondents

Mr. K. S. Patil for the Petitioner.

Mr. D. P. Adsule, APP for the Respondents -
State.

CORAM : B. H. MARLAPALLE, J.

DATE : 7TH SEPTEMBER, 2007.

P.C.

. This Petition filed under Article 227 of the Constitution brings in question the Order of externment passed on 28.4.2006 by Dy. Commissioner of Police, Zone - I, Mumbai, under Section 56 of the Bombay Police Act and duly confirmed by the lower Appellate Authority by order dated 18.11.2006 by dismissing the Appeal filed under Section 60 of the said Act, the Petitioner has been externed for a period of two years from the territories of three districts, viz. Greater Mumbai, Thane, Raigad (New Mumbai is part of Thane District).

2. It was contended by Mr. Patil, the learned counsel for the petitioner that the show cause notice dated 31.3.2005 is foundation of the impugned externment order passed on 28.4.2006 and in the said show cause notice there was only one C.R. registered as C.R. No. 58 of 2006 for the offences punishable under Section 324 read with 34 of I.P.C. that was taken into consideration along with two in-camera statements and the incident covered by the said C.R. had allegedly taken place on 17.2.2006 and which was the subject matter of C.R. No. 58 of 2006.

3. Mr. Adsule, learned APP on the other hand submitted that the Petitioner was issued the first show cause notice on 22.8.2005 which has been annexed to the petition at Exhibit 'A' and while the enquiry on the said show cause notice was in progress, the Competent Authority was informed of the fresh C.R. having been registered with MRA Marg Police Station (C.R. No. 58 of 2006) and therefore the D.C.P. of the concerned Zone passed an order directing to issue a supplementary show cause notice and that is how the second show cause notice dated 31.3.2006 was issued.

4. In the submissions of Mr. Adsule, the second show cause notice is not an independent notice and being an extension of the first notice, both the show cause notices are required to be read together in support of the impugned order of externment and if so considered it will be noticed that before the show cause notice dated 22.8.2005 was issued, two in-camera statements were already recorded and therefore there is sufficient material to sustain the order of externment passed against the petitioner.

5. Learned APP has placed before me the original file and his submissions are supported by the record. On 28.3.2006 the D.C.P. of the concerned Zone passed an order on perusal of the enquiry proceedings relating to the show cause notice dated 22.8.2005 and noted that fresh C.R. was registered with the MRA Marg Police Station. He directed to issue a supplementary show cause notice. Therefore, it is clear that the proceedings on the first show cause notice dated 22.8.2005 were not closed and therefore in support of the externment order impugned in this petition, both the show cause

notices will have to be read together. Original record placed before me indicates that there were in all 4 in-camera statements recorded, 2 in support of the first show cause notice and remaining 2 in support of supplementary show cause notice dated 31.3.2006. Even though the in-camera statements set out in the show cause notice dated 31.3.2006 relate to the same incident which was subject matter of C.R. No. 58 of 2006, other 2 in-camera statements recorded on 9.6.2005 and 10.6.2005 relate to two different incidents and which allegedly showed the involvement of the petitioner in extortion of money under the threats of assault and the victims are shop keepers, stall holders and other traders. These statements do indicate that the witnesses were not inclined to come in the open and depose against the petitioner on account of fear of their personal security as well as the safety of their family members etc. And the lower Appellate Authority while confirming the order of externment has considered the in-camera statements recorded before the show cause notice was issued and upheld the order of externment. Under these circumstances, the order of externing the petitioner cannot be faulted with.

6. However, Mr. Patil pointed out that in the second show cause notice there was no mention of the in-camera statements recorded on 9.6.2005 and 10.6.2005 and therefore there was no opportunity available to the petitioner to put up his defence during the enquiry. This submission does not impress me because the record shows that after the first show cause notice was issued, the petitioner was heard and in any case the lower Appellate Authority provided sufficient opportunity to the petitioner to put up his defence.

7. Mr. Patil pointed out that the petitioner is a young man of about 22 years of age and he already has suffered an externment for about one year and five months and he urged before this court to take a sympathetic view for his early visit to his family by bringing the externment period to an end before two years. Having regard to the peculiar facts and circumstances of this case, it would be proper that externment period is reduced from two years to one and half years.

8. Hence, the petition is partly allowed and

the Order of externment is upheld but the period of externment is reduced from two years to one and half years.

(B. H. MARLAPALLE, J.)